100. COVERAGE

The coverage provisions of State unemployment insurance laws determine the employers who are liable for contributions and the workers who accrue rights under the laws. Except for nonprofit organizations and governmental entities, coverage is defined in terms of (a) the size of the employing unit's payroll or the number of days or weeks worked during a calendar year, (b) the contractual relationship of the workers to the employer, and (c) the place where the worker is employed. Coverage under the laws is limited by exclusion of certain types of employment. In most States, however, coverage can be extended to excluded workers under provisions which permit voluntary election of coverage by employers.

The coverage provisions of the State laws, in general, have been influenced by the taxing provisions of the Social Security Act, now the Federal Unemployment Tax Act (FUTA), since employers who pay contributions under an approved State unemployment insurance act may credit their State contributions against a specified percentage of the Federal tax.

Other coverage provisions are influenced by the requirements of the Federal law which provide, as a condition for approval of the State law, that certain services, although they continue to be excluded from Federal coverage under the FUTA, must be covered under the State law; i.e., service for most nonprofit organizations and service performed for governmental entities. Prior to 1956, the Federal law was applicable to employers of eight or more workers on at least 1 day in each of 20 different weeks in a calendar year. The size-of-firm criteria was reduced to four in 1956 and to one in 1972. In addition, except for employers of agricultural labor and domestic service, the FUTA is now applicable to employers who during any calendar quarter in the current or immediately preceding calendar year paid wages of $1,500 or more, or to employers of one or more workers on at least 1 day in each of 20 weeks during the current or immediately preceding calendar year. In the case of agricultural labor, the FUTA applies to employers who paid wages in cash of $20,000 or more for agricultural labor in any calendar quarter in the current or preceding calendar year or who employed 10 or more workers on at least 1 day in each of 20 different weeks in the current or immediately preceding calendar year. As for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the FUTA applies to any employer who, during any calendar quarter in the current or preceding calendar year, paid wages in cash of $1,000 or more for domestic service. (Table 100)

The Federal and State definitions of employment exclude certain types of service from coverage (sec. 125). Since 1939 railroad workers have been excluded from coverage under the Federal-State system and covered by a special Federal unemployment insurance program administered by the Railroad Retirement Board.

105 Employers Covered

The coverage provisions of most State laws utilize definitions of employing unit and employer. The employing unit is the more inclusive term; it is any individual of any one of specified types of legal entity that had one or more individuals performing service for it within the State. All employing units are subject to the act with respect to the furnishing of required reports. An employer is an employing unit that meets specific requirements and hence is subject to contributions and its workers accrue rights for benefits.

The employer covered is determined by the number of days or weeks a worker is employed or the amount of the employer's quarterly or yearly payroll. Originally, most State laws covered only those employers who, within a year, had eight or more workers in each of 20 weeks. This was due largely to the coverage provisions of the FUTA. As the States gained experience in administering unemployment insurance and as a result of the 1954 and 1970 amendments to the FUTA smaller firms have been brought under the acts in all States.

COVERAGE

Thirty-two States have adopted the Federal definition of employer; i.e., a quarterly payroll of $1,500 in the calendar year or preceding calendar year or one worker in 20 weeks. Twelve States provide the broadest possible coverage by including all employers who have any covered service in their employ. The other States have requirements of less than 20 weeks or payrolls other than $1,500 in a calendar quarter (Table 100).

110 COVERAGE BY REASON OF A FEDERAL REQUIREMENT

The 1970 and 1976 amendments to the FUTA added to the types of services which, as a condition for approval of the State law, must be covered under the State law. This Federal requirement for the extension of coverage differs from an extension of coverage by reason of Federal coverage. If a State law fails to cover services that are covered under the FUTA, the employer must pay the full Federal tax and the employee may get no benefits based on such services, but certification of the State law is unaffected. If, however, a State law fails to cover services which the Federal law requires the State to cover, or excludes services from coverage, the State law would not be approved for purposes of tax credits against the Federal tax and no employer in the State would receive a tax credit for State contributions.

110.01 COVERAGE OF NONPROFIT ORGANIZATIONS.--Service for nonprofit organizations continues to be excluded from coverage under the FUTA, but some service is required to be covered under the State laws. Coverage under State laws is required for service for nonprofit organizations which employ four or more workers in 20 weeks, are organizations which are described in section 501(c)(3) of the Federal Internal Revenue Code of 1986, and which are exempt from Federal income tax under section 501(a) of the code. However, a number of States have covered nonprofit organizations under the regular coverage provisions. The State law is required to give each nonprofit organization that must be covered an option on financing benefits. Such nonprofit organizations must be given the right either to reimburse the State for benefits paid or pay contributions under the State law's regular tax provisions.

110.02 COVERAGE OF GOVERNMENTAL ENTITIES.--The Federal law requires that States cover most services for the State and its political subdivisions. When service is performed for an instrumentality owned by more than one State or political subdivision, coverage is determined based on the location of the work. (See section 120.) States are required to pay compensation based on service with a governmental entity or a nonprofit organization under the same terms and conditions as for other covered services. There are, however, special provisions applicable to school personnel between school terms. (See section 450.03 for a discussion of these special provisions.) The States are required to provide local governmental entities a choice of financing benefits either through reimbursement, contributions, or any other method deemed feasible by the State (Table 210).

Since the Federal law includes no size-of-firm restrictions for governmental entities as it does for nonprofit organizations, all governmental entities, regardless of size, must be covered. There are, however, certain types of services which the Federal law permits States to exclude from governmental coverage (Table 104). These include service performed as an elected official; as a member of a legislative body, or a member of the judiciary; as a member of the State National Guard or Air National Guard; as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; in a position which, under the State law, is designated as a major nontenured policymaking or advisory position or a part-time policymaking position which ordinarily requires 8 or fewer hours a week.

In addition, there are other services which, under Federal law, are permitted to be excluded from coverage when performed for a nonprofit organization or governmental entity. These include services

(1) in the employ of a church or an organization operated primarily for religious purposes; (2) by a minister in the exercise of ministerial duties; (3) by an individual receiving rehabilitation help in a facility which carries out programs for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; (4) as part of an unemployment work-relief or work-training program financed partially or completely by a governmental entity; or (5) by an inmate of a custodial or penal institution.

115 EMPLOYER-EMPLOYEE RELATIONSHIP

The relationship of a worker to the person for whom services are performed also influences whether the employer must count the worker in determining liability under the law. In Alabama and Oklahoma the statute defines employee in terms of a master-servant relationship but most State laws do not define or use the word employee. The common law master-servant relationship is the principal consideration in the determination of coverage in four other States: in Kentucky, Minnesota and Mississippi the master-servant concept is only part of the statutory definition of employee status; in the District of Columbia the ordinary rules relating to master-servant apply by regulation. California and New York have a general definition of employment in terms of services performed under "any contract of hire, written or oral, express or implied"; North Carolina, with a similar provision, limits the contract of hire to one creating the legal relationship of employer-employee.

Most of the laws have a broader concept of what constitutes an employer-employee relationship. They have incorporated strict tests of what constitutes such absence of control by an employer that the worker would be classed as an independent contractor rather than an employee. In a few States the effect of these tests has been negated by court decisions holding that if the employer-employee or master-servant relationship is not established, the tests need not be applied. More than half the States provide that service for remuneration is considered employment unless it meets each of three tests: (A) the worker is free from control or direction in the performance of the work under the contract of service and in fact; (B) the service is performed either outside the usual course of the business for which it is performed or is performed outside of all places of business of the enterprise for which it is performed; and (C) the individual is customarily engaged in an independent trade, occupation, profession, or business. A few States require the first or third test only; other States, any one of them; some States, the first and one other (Table 102).

120 LOCATION OF EMPLOYMENT

With 53 jurisdictions operating separate unemployment insurance laws, it is essential to have a basis for coverage that will keep individuals who work in more that one State from falling between two or more State laws and will also prevent the requirements of duplicate contributions on the wages of a single individual. Therefore, the States have adopted a uniform definition of employment in terms of localization of work. This definition provides for coverage of the entire services in one State only, the State in which the multistate worker will most likely look for a job when unemployed. Under this definition of the localization of employment, a traveling salesperson, living in Michigan and working for a firm with headquarters in New York, would be considered to have the services localized in Michigan and covered there if all the work was there or if most of it was there and the work outside the State was incidental and temporary. If the service cannot be considered to be localized in any one State, the entire service can still be covered in one State--in New York from which the services are directed if some work is performed there, or in Michigan if some work is performed there and in other nearby States.

If an individual performs no service in the State where the base of operations is located, none in the State from which the service is directed or controlled, nor in the State where the individual resides, then under the additional test the service would be covered in the State where the base of operations is located.

COVERAGE

120.01 ELECTION OF COVERAGE OF SERVICES PERFORMED OUTSIDE THE STATE.--The laws of most States permit employers to elect coverage of workers who perform their services entirely outside the State if they are not covered by any other State or Federal unemployment insurance law. Of the States permitting such elections, residence is required in the State of election in all but Connecticut, Illinois, Indiana, Michigan, Nebraska, Oregon, Pennsylvania and Wisconsin.

120.02 COVERAGE OF SERVICES PERFORMED OUTSIDE THE UNITED STATES.--Prior to the 1970 amendments to the FUTA, employment included only services performed within the United States, with the exception of certain services performed in connection with an american vessel or aircraft. With respect to services performed after 1971, the Federal law also covers services performed outside the United States by an American citizen for an American employer. Coverage of such services is not applicable to services performed in a contiguous country with which the United States has an agreement relating to unemployment insurance (Canada).

In determining the State of coverage, the following four tests are applicable: (A) the State in which the employer has the principal place of business; (B) the State in which the employer has residence; (C) the State in which the employer elects coverage; or (D) the State in which the individual files a claim.

120.03 ELECTION OF COVERAGE THROUGH RECIPROCAL COVERAGE ARRANGEMENT.--To provide continuity of coverage for individuals working successively in different States for the same employer, most States have adopted legislation which enables them to enter into reciprocal arrangements with other States and under which such services are covered in a single State by election of the employer. The arrangements permit an employer to cover all the services of such a worker in any State in which any part of the service is performed or the place of residence or where the employer maintains a place of business. Forty-nine1/ States are participating under such arrangements.

Services covered under the terms of reciprocal arrangements are typically those performed by individuals who contract by the job and whose various jobs are in different States. An engineer, who works for an Illinois firm on a construction job in Minnesota which lasts for 6 months and who then goes to Texas on a job for 9 months, might be covered by both the Minnesota and Texas laws, respectively, for the services performed in each. Under the reciprocal arrangement, the Illinois employer could elect to have all services performed by this engineer covered by the Illinois law.

All the States have provisions for the election of coverage of services outside the State not covered elsewhere or of services allocated to the State under a reciprocal agreement.

125 EMPLOYMENT SPECIFICALLY EXCLUDED

Employment covered by the State laws is defined mainly in terms of services excluded from coverage. The definitions, in general, follow the exclusions under the FUTA.

This section presents a brief discussion of each of the exclusions which occur in all or nearly all the State laws, followed by a tabulation of the other more frequent exclusions (Table 103). A great many miscellaneous exclusions, which occur in only a few States and affect relatively small groups, have been omitted.

125.01 AGRICULTURAL LABOR.--Most States have followed the Federal law provisions relating to agricultural labor and therefore limit coverage to service performed on large farms. Only eight States cover services on smaller farms (Table 100). Most of the laws include substantially the same definition of agricultural labor that is found in the FUTA, as amended in 1939, 1970, and 1976.

1/All except Connecticut, Kentucky, Mississippi, and New York.

Prior to the 1939 amendments, agricultural labor was defined for purposes of the Federal law by administrative regulation of the Bureau of Internal Revenue. Services on a farm in the raising and harvesting of any agricultural produce were excluded, as were services in some processing and marketing activities when performed for the farmer who raised the crop and as an incident to primary farming operations. Most of the States similarly defined agricultural labor by regulation or interpretation. The definition of agricultural labor added to the FUTA in 1939 broadened the exclusion; some processing and marketing activities were excluded whether or not they were performed in the employ of the farmer. Also excluded were services in the management and operation of a farm, if they were performed for the farm owner or operator.

The 1970 amendments to the FUTA narrowed the definition of agricultural labor, thereby extending coverage to some marginal agricultural activities. Three tests are applied in determining whether services are agricultural labor: (1) the service must be performed in the employ of the operator of a farm; (2) the service must be performed with respect to a commodity in its unmanufactured state; and (3) the operator must have produced more than one-half of a commodity with respect to which the service is performed. If any of the three tests is not met, the services are not agricultural labor and are not excluded from coverage.

The 1976 amendments did not change the definition of agricultural labor--they did, however, cover agricultural labor if performed for an employer who, in any calendar quarter in the current or preceding calendar year paid cash remuneration of $20,000 or more for individuals employed in agricultural labor, or who on each of some 20 days in 20 different weeks during the current or preceding calendar year employed at least 10 individuals in agricultural labor. States have the option of excluding from coverage service performed in agricultural labor on or after January 1, 1995, by aliens who are admitted to the United States pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act (Table 100). However, these aliens are counted in determining whether an agricultural employer meets the wage or size of firm requirements for coverage.

In connection with the extension of coverage to some agricultural workers, the FUTA established a special rule for determining who will be treated as the employer, and therefore, liable for the Federal tax, in the case of agricultural workers who are members of a crew furnished by a crew leader to perform services in agricultural labor for a farm operator. Individuals who are members of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator are treated as employees of the crew leader if the leader is registered under the Migrant and Seasonal Agricultural Protection Act, or if substantially all the members of the crew operate or maintain mechanized equipment furnished by a crew leader. A member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator will not be treated as an employee of the crew leader if the individual is an employee of the farm operator within the meaning of the State law. Conversely, any worker who is furnished by a crew leader to perform service in agricultural labor for a farm operator but who is not treated as an employee of the crew leader is treated as an employee of the farm operator. This special rule is

intended to resolve any question as to whether an individual's employer is the farm operator or crew leader. The same size-of-firm coverage provisions (10 in 20 weeks or $20,000 in a calendar quarter) apply to a crew leader as to a farm operator.

South Carolina excludes from agricultural coverage services performed by students enrolled in and attending classes in a secondary school or an accredited college for at least 5 months during a year and by part-time individuals who at the conclusion of the agricultural labor would not otherwise qualify for benefits.

125.02 DOMESTIC SERVICE.--Because of the 1976 amendments, all of the States cover domestic service in private homes, college clubs or fraternities if the quarterly remuneration, in cash, equals or exceeds $1,000. Three States go beyond the Federal provision. The District of Columbia, New York and the Virgin Islands cover such service if the quarterly payroll is at least $500 or more (Table 100). Also, California specifically includes in domestic coverage in-home supportive services provided under the Welfare and Institution Code. Maine excludes homeworkers in the knitted outerwear industry. Virginia specifically excludes from domestic coverage medical services performed by an individual employed to perform those services in a private residence or a medical institution if the person who employed the individual is also the person receiving the services, and services performed under agreement with a Public Human Service Agency in the home of the recipient of the service or the provider of the service.

125.03 SERVICE FOR RELATIVES.--All States exclude service for an employer by a spouse or minor child and, except in New York, service of an individual in the employ of a son or daughter.

125.04 SERVICE OF STUDENTS AND SPOUSES OF STUDENTS.--Prior to the 1970 amendments, service in the employ of a school, college or university by a student enrolled and regularly attending classes at such school was excluded from the definition of employment. The 1970 amendments retained this exclusion and also excluded service performed after December 31, 1969, by a student's spouse for the school, college, or university at which the student is enrolled and regularly attending classes, provided the spouse's employment is under a program designed to give financial assistance to the student, and the spouse is advised that the employment is under such student-assistance program and is not covered by any program for unemployment insurance. Also excluded is service by a full-time student in a work-study program provided that the service is an integral part of the program. Twelve States1/ exclude services performed by a full-time student in the employ of an organized camp if the services meet certain criteria.

125.05 SERVICE OF PATIENTS FOR HOSPITALS.--The 1970 amendments excluded service performed for a hospital after December 31, 1969, by patients of the hospital. Such service may be excluded from coverage under the State law whether it is performed for a hospital which is operated for profit or for a nonprofit or State hospital which must be covered under the State law.

125.06 SERVICE FOR FEDERAL INSTRUMENTALITIES.--An amendment to the FUTA, effective with respect to services performed after 1961, permits States to cover Federal instrumentalities which are neither wholly nor partially owned by the United States, nor exempt from the tax imposed under section 3301 of FUTA by virtue of any other provision of law which specifically refers to such section of the Code in granting such exemptions. All states except New Jersey have provisions in their laws that permit the coverage of service performed for such wholly privately owned Federal instrumentalities.

125.07 MARITIME WORKERS.--The FUTA and most State laws initially excluded maritime workers, principally because it was thought that the Constitution prevented the States from covering such workers. Supreme Court decisions in **Standard Dredging Corporation v. Murphy and International Elevating Company v. Murphy**, 319 U.S. 306 (1943), were interpreted to the effect that there is no such bar. In 1946 the FUTA was amended to permit any State from which the operations of an American

vessel operating on navigable waters within, or within and without the United States are ordinarily regularly supervised, managed, directed, and controlled, to require contributions to its unemployment fund under its State unemployment compensation law.

Some States whose laws did not specifically exclude maritime workers automatically covered such workers after 1943. In others, coverage was automatic after 1946 because of provisions that State coverage would follow any extension of Federal coverage. Many other States took legislative action to limit the exclusion of maritime service to service performed on non-American vessels. At present most laws provide for coverage of maritime workers. In the only coastal States without such

---

1/California, Maine, Maryland, Missouri, New Hampshire, New York, North Carolina, Oregon, Tennessee, Texas, Vermont, and Virginia.

statutory coverage, maritime workers are covered indirectly. New York has entered into reciprocal arrangements covering such workers, and in Maryland, Mississippi and South Carolina, maritime employers have elected coverage. In Arizona, Montana, Nevada and North Dakota, the exclusion of maritime workers has little meaning.

125.08 COVERAGE OF SERVICE BY REASON OF FEDERAL COVERAGE.--Most States have a provision that any service covered by the FUTA is employment under the State law (Table 101).

Many States have added another provision that automatically covers any service which the Federal law requires to be covered even though it is service which is not covered under the Federal law.

125.09 VOLUNTARY COVERAGE OF EXCLUDED EMPLOYMENTS.--In all States except Alabama, Massachusetts and New York, employers, with the approval of the State agency, may elect to cover most types of employment which are exempt under their laws. The New York law permits employers who are not otherwise covered as agricultural employers to elect coverage of agricultural workers under certain conditions. New York also permits coverage of services performed by an individual employed at a place of religious worship.

125.10 SELF-EMPLOYMENT.--Employment, for purposes of unemployment insurance coverage, is employment of workers who work for others for wages; it does not include self-employment. Although the protection of the Federal old-age, survivors and disability insurance program has been extended to most of the self-employed, protection under the unemployment insurance program is not feasible, largely because of the difficulty of determining whether in a given week a self-employed worker is unemployed. One small exception has been incorporated in the California disability insurance law. A subject employer may apply for self-coverage: if election is approved, wages for purposes of contributions and benefits are deemed to be the quarterly wages needed to qualify for the maximum weekly benefit amount and the contribution rate is fixed at 1.25 percent of wages.

130 COVERAGE OF OFFICERS OF CORPORATIONS

Under the FUTA an officer of a corporation is defined as an employee of the corporation and wages paid to the employee are subject to the Federal Tax. However, some States have enacted exclusions from coverage and restrictions on benefits for corporate officers.

In California an individual who is the sole stockholder or the only stockholder other than the spouse and those who are related by marriage or blood to all other stockholders and who own 25 percent of the stock of a private corporation and an employee under the law may file a statement disclaiming any rights to benefits and be exempt from contributions. The exemption continues for not less than 2 years and as long as the statement is in effect. California also exempts services performed by an officer of the corporation who is the sole shareholder, or the only shareholder other than its spouse if not subject to FUTA.

California and Iowa exempt services performed by an individual in the employ of a corporation of which he/she is the majority or controlling shareholder and an officer if not subject to FUTA. Alaska has a similar provision but services are exempt only if the corporation is not a governmental entity and the employee is an executive officer of the corporation. Oklahoma exempts services, not considered nonprofit, if he/she owns 100% of the stock. California exempts an officer or shareholder of an agricultural corporation unless the corporation is an employer defined under FUTA. Minnesota has a similar provision which exempts officers or shareholders in a family agricultural corporation.

Delaware exempts services performed by an officer of a corporation organized and operated exclusively for social or civic purposes and only when the services performed by the officer are part-time and when the remuneration received does not exceed $75 in any calendar quarter. North Dakota has a similar provision which exempts corporate officers when one-fourth or more of the ownership interest was owned or controlled by the individual's spouse, child or parent or by any combination of them if the corporation requests exemption from coverage.

Washington exempts services performed by corporate officers. However, this exemption does not apply to corporate officers employed by nonprofit or governmental employers.

In Hawaii an individual will not be eligible for benefits if an owner-employee of a corporation brings about his/her unemployment by divesting ownership, leasing the business interest, terminating the business, or by other similar actions. Also, Hawaii excludes from coverage services for a family owned private corporation, organized for profit that employs family members who own at least 50 percent of the corporate shares provided certain criteria are met.

Michigan limits benefits payable based on services performed in a family corporation in which the individual or his/her son, daughter, spouse or parent owns more than 50 percent of the proprietary interest in the corporation to no more than 10 weeks.

In Minnesota an individual who has been paid 4 times his/her weekly benefit amount may not use wages paid by an employing unit if the individual (a) individually or jointly with a spouse, parent or child owns or controls 25 percent or more interest in the employing unit or (b) is the spouse, parent or minor child of any individual who owns or controls 25 percent or more interest in the employing unit, and (c) is not permanently separated from employment.

Oregon exempts services performed by corporate officers who are directors of the corporation, who have a substantial corporation ownership interest and who are related by family, if the corporation elects not to provide coverage for the related family members.

In Texas an individual will not be eligible for benefits from the date of the sale of a business and until he/she is reemployed and eligible for benefits based on the wages received through the new employment if the business was a corporation and the individual was an officer or a majority or controlling shareholder in the corporation and was involved in the sale of the corporation; or if the business was a limited or general partnership and the individual was a limited or general partner who was involved in the sale of the partnership, or the business was a sole proprietorship and the individual was the proprietor who sold the business.

In Wisconsin the amount of base period wages used to compute total benefits payable to an individual may not exceed 10 times the individual's weekly benefit amount based on the individual's employment with a corporation or a limited liability company if one-half or more of the ownership interest in the corporation or limited liability company is or during the employment was owned or controlled by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them; or a corporation, if one-fourth or more of the ownership interest in the corporation is or during the employment was owned or controlled by the individual. Wisconsin also permits a corporate employer having taxable payrolls of $400,000 or less to elect not to have the

principal officers covered if the officers have a direct or indirect substantial ownership interest in the corporation.

Employers of corporate officers are liable for the full Federal tax on wages paid to these individuals whose services are covered under the Federal law but are excluded from coverage by State law.